

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA

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|--------------------------------|---|---|
| DANIEL THOMAS, |) | |
| |) | No. 5:17-cv-4002 |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | Defendant's Motion For Relief To File |
| PERFORMANCE CONTRACTORS, |) | Additional Statement of Facts in Support |
| INC., a Louisiana Corporation, |) | of Defendant's Motion for Summary |
| |) | Judgement |
| Defendant. |) | |
| |) | |

Defendant Performance Contractors, Inc., a Louisiana Corporation ("Defendant") submits the following Motion for Leave to File Additional Statement of Facts in Support of Defendant's Motion for Summary Judgment and states as follows:

1. Defendant seeks to add additional statements of fact incorporating the phone records of Plaintiff that were not produced to Defendant until after the dispositive motion deadline.

2. On May 4, 2017, Defendant served Defendant's First Requests for Production of Documents on Plaintiff, including Request No. 38 seeking "All documents relating to any cellular telephone used by Plaintiff from April 2015 to the present. (Exhibit A)

3. Plaintiff served his Responses to Defendant's Requests for Production on June 15, 2017, objecting to Request No. 38 and not producing any telephone records. (Exhibit B)

4. Counsel for Defendant sent a letter to Plaintiff's counsel on July 7, 2017 again seeking Plaintiff's telephone records. (Exhibit C)

5. Counsel for Plaintiff responded to Defendant's letter on July 14, 2017 withdrawing the objection to Request 38, and producing Plaintiff's telephone records for September 2016 to July

2017. Plaintiff's counsel stated, "He [Plaintiff] has request his Sprint records for the time period you requested by has not yet received them." (Exhibit D)

6. Plaintiff supplemented his response to Request 38 again on September 21, 2017, producing telephone records for the period March 10, 2015 to January 9, 2016. (Exhibit E)

7. Counsel for Defendant emailed Plaintiff's counsel on November 30, 2017 inquiring about the records for the missing period of January 10, 2016 to September 2016. (Exhibit F)

8. Plaintiff counsel's paralegal responded on December 1, 2017 stating, "Mr. Thomas [Plaintiff] has requested the records and he was told he should have them in 3-5 business days." (Exhibit G)

9. Defendant's counsel followed up on December 8, 2017 regarding the telephone records. (Exhibit H)

10. Plaintiff counsel's paralegal responded on December 8, 2017 stating Plaintiff had not received the records but would call Sprint to see when they were sent out. (Exhibit I)

11. On December 19, 2017, Defendant still had not received any records or further correspondence and Defendant's counsel followed up via email. (Exhibit J)

12. Plaintiff's counsel responded to Defendant's counsel's email and recommended Defendant request the records directly from the carrier. No comment was made about Plaintiff's request to obtain the records himself. (Exhibit K)

13. On December 20, 2017, Defendant counsel's paralegal emailed Plaintiff's counsel a release to sign so Defendant could request the Sprint records. (Exhibit L) Plaintiff returned the executed release on December 22, 2017. (Exhibit M)

14. Defendant served Sprint with a subpoena for the telephone records on December 22, 2017. (Exhibit N) Sprint mailed the records to Defendant on January 16, 2018 and Defendant received the requested records on January 18, 2018. .

15. Defendant produced the Sprint records to Plaintiff on January 22, 2018.

16. Defendant seeks to submit five (5) additional facts that incorporate and reference the phone activities of Plaintiff during his application to and hiring by his new employer, Industrial Maintenance, Inc. and a related appendix containing those cited to Sprint phone records.

17. Defendant's counsel conferred with Plaintiff's counsel and Plaintiff's counsel could not form an opinion based on the production made on January 22, 2018.

18. Attached is Defendant's Supplemental Statement of Facts in Support of Defendant Motion for Summary Judgment and Supplemental Appendix.

WHEREFORE, Defendant respectfully request that this Court grant its Motion for Leave to File Additional Statement of Facts in Support of Defendant's Motion for Summary Judgment, and direct the Clerk of Court to file the attached Supplemental Statement of Facts in Support of Defendant Motion for Summary Judgment and Supplemental Appendix into the record.

SIMMONS PERRINE MOYER BERGMAN PLC

By: 

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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2018, filed the foregoing using the Court's CM/ECF system, which will send notification of said filing to the following:

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ATTORNEY FOR PLAINTIFF

A handwritten signature in blue ink that reads "Evin D. Nathan". The signature is written in a cursive, flowing style. Below the signature is a solid horizontal line.
